



King County Mental Health Chemical Abuse and Dependency Services Division 2002 Briefing Paper

MENTAL HEALTH ADVANCE DIRECTIVES

BACKGROUND:

A mental health advance directive is a legal document wherein a client may specify treatment requests and preferences to be provided at a future time, usually when the client is incompetent and unable to give informed consent. These directives may, in addition to or instead of specifying treatment requests, delegate treatment decisions to another person. In these ways, a mental health advance directive is similar to a “living will” that a person may make to guide end-of-life decisions.

In our state, mental health advance directives are allowed under the same laws that allow the creation of a living will or the specification of a durable power of attorney. However, most mental health advocates, providers, and policymakers recommend more specific legal provisions that address some of the unique aspects of directives for persons with mental illness. Such legislation was proposed in Washington State during the 2002 session. Though no law was passed, this work will continue until Washington joins the over fifteen other states that currently have advance directive laws specific to mental illness.

In addition to this state legislative activity, the federal Centers for Medicare and Medicaid Services recently finalized their rules for Medicaid managed care reform. Under this rule, required by the Balanced Budget Act of 1997, public mental healthcare entities will be required to provide information to clients and the general public on mental health advance directives and to promote their use. In the upcoming months, the use of these directives is expected to increase.

ISSUES/CHALLENGES:

The following problems must be solved before clients, advocates, providers, and policymakers can unite in support of advance directives:

How can a client obtain sufficient information about relevant treatment options, so that he is adequately informed when writing a mental health advance directive?

Should a client be legally allowed to revoke his advance directive at any time or only when declared competent to do so?

How can advance directives most easily be made available to treatment providers?

How should a treatment provider deal with instructions specified in an advance directive that are inconsistent with standards of care? What should a treatment provider do when an advance directive requests something that is limited by other areas of the law, such as the releasing of confidential information or requiring of informed consent?

What happens when a client requests a treatment and a health insurer determines the treatment does not meet medical necessity criteria and therefore won't pay for it?

RECOMMENDATIONS/LEGISLATIVE ACTION:

- MHCADSD supports the use of mental health advance directives. Mental health advance directives are an important tool for recovery and have the potential to improve quality of care by enhancing communication between a client and his providers and by enhancing continuity of care across treatment settings.
- In the development of advance directives, we highly recommend a client consult with a trusted mental health care provider and others who have been involved with the client during mental health crises. Should the directive specify preferences related to psychiatric medications, we recommend the client consult an experienced prescriber of these treatments. Should the directive specify preferences for inpatient treatment, we recommend the client consult a provider knowledgeable in inpatient treatments, if available.
- We believe a client should have a right to specify that his advance directive be irrevocable when he is not competent, if that is the client's choice.
- King County will continue its efforts to assist clients in making known to the system of publicly funded treatment providers the fact that the client's advance directive exists. We will continue to work with our providers to develop procedures for ready access to directives, especially for clients in crisis. We will work with our providers to develop procedures that allow the initiation of the care specified in an advance directive without unnecessary obstacles and delays.
- We will advocate for a state law that clearly specifies its relationship to other potentially conflicting laws, such as those on confidentiality, informed consent, and involuntary treatment.
- We will advocate for a state law that allows treatment providers some flexibility to implement advance directive requests without undue risk of malpractice liability while still requiring provider diligence, care, good faith, and professional conduct. At the same time, we will advocate for a treatment provider's option to decline to provide treatment that he feels falls below generally accepted standards.
- Though we will advocate for insurers to be required to authorize and pay for only those treatments that are determined to be medically necessary, we will consider alternative treatments when requested by a client, that are similar in cost-effectiveness, risk, and clinical outcome, to meet this same standard. Additionally, we will continue and further develop our procedures for client appeals of medical necessity decisions, so that such decisions continue to occur in an environment of respect for client preferences, free discussion, and scientific research.